IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

ERNEST EDWARD GAINES	§	
v.	§	CIVIL ACTION NO. 6:17ev74
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Petitioner Ernest Gaines, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254, although the nature of his complaint is not clear. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Gaines referred to a 2006 aggravated robbery conviction out of Dallas County, but the grounds for relief set out in his petition involve the damaging or confiscation of his property. The Magistrate Judge ordered Gaines to file an amended complaint setting out a short and plain statement of his claim. When Gaines did not comply with either order, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice for failure to prosecute or to obey an order of the Court.

Gaines received a copy of the Magistrate Judge's Report on July 25, 2017, but no objections have been received; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge.

Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. See

United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918, 109 S.Ct. 3243

(1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is

"clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 11) is **ADOPTED** as the

opinion of the District Court. It is further

ORDERED that the above-styled civil action is DISMISSED WITHOUT PREJUDICE

for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any and all motions which may be pending in this action are hereby

DENIED.

So Ordered and Signed

Aug 29, 2017

Ron Clark, United States District Judge

Pm Clark

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